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7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF WASHINGTON**

9 JAMES A. CLEMENTS AND JASON  
10 CLEMENTS,

11 Plaintiffs,

12 vs.

13 THE CONFEDERATED TRIBES OF  
14 THE COLVILLE RESERVATION; and  
15 THE COURT OF THE  
16 CONFEDERATED TRIBES OF THE  
COLVILLE RESERVATION,

17 Defendants.

**No.**

**COMPLAINT**

18 COME NOW JAMES A. CLEMENTS AND JASON CLEMENTS, by and  
19 through their attorneys, Michael W. Johns and Roberts Johns & Hemphill,  
20 PLLC, and for their Complaint against THE CONFEDERATED TRIBES OF  
21 THE COLVILLE RESERVATION ("the Tribe"); and THE COURT OF THE  
22 CONFEDERATED TRIBES OF THE COLVILLE RESERVATION ("the Tribal  
23 Court"), state as follows:  
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26 COMPLAINT -- 1

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**SUMMARY OF CASE**

1. The Plaintiffs are Washington non-tribal residents and the shareholders and officers of South Bay Excavating, Inc. ("South Bay"). South Bay and the Tribe entered into a Contract on November 1, 2016. South Bay later attempted to assign its rights and responsibilities under the Contract to another corporation owned by Plaintiff Jason Clements, Liquid Networks, Inc. ("Liquid Networks"), but the Tribe rejected the assignment and did not allow Liquid Networks to perform work on the project.

2. The Tribe thereafter brought claims against South Bay and Liquid Networks, as well as against the individual Plaintiffs, before the Tribal Court. Plaintiffs now seek (a) declaratory relief in the form of an order declaring that the Tribal Court lacks jurisdiction over the Plaintiffs, and (b) an injunction prohibiting the Tribal Court from adjudicating the claims brought against the Plaintiffs by the Tribes.

3. The case before the Tribal Court is titled *THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION vs. SOUTH BAY EXCAVATING, INC., LIQUID NETWORKS, INC., JAMES A. CLEMENTS AND JASON CLEMENTS*, Case No. CV-OC-2018-410009.

4. The Plaintiffs have exhausted their Tribal Court remedies before bringing this action.

**PARTIES**

5. James A. Clements is a resident of the state of Washington residing at 1333 Maple Valley Rd. SW, Olympia, Washington.

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2           6.     Jason Clements was a resident of the state of Washington  
3 residing at 4627 11<sup>th</sup> Ave. NW, Olympia, Washington at the time of all material  
4 events herein. Jason Clements is now a resident of Texas.

5           7.     The Confederated Tribes of the Colville Reservation is a federally  
6 recognized sovereign Indian tribe with its mailing address at 21<sup>st</sup> Colville  
7 Street, Nespelem, WA 99155.

8           8.     The Tribal Court of the Confederated Tribes of the Colville  
9 Reservation is organized pursuant to the Tribe's Constitution and, along with  
10 the Court of Appeals of the Confederated Tribes of the Colville Reservation,  
11 make up The Judicial Branch of government for the Tribe.

12                           **JURISDICTION AND VENUE**

13           9.     This Court has jurisdiction over this matter pursuant to 28  
14 U.S.C. § 1331 because this action arises under the Constitution, laws, or  
15 treaties of the United States; and under 28 U.S.C. §2201 because it  
16 involves an actual controversy. The District Court reviews the Tribal Court's  
17 decisions in its exercise of jurisdiction as a matter of federal law.

18           10.    Venue is proper in this Court pursuant to 28 U.S.C. §  
19 1391(b)(2) because the Defendant resides in the Eastern District of  
20 Washington and the events giving rise to the claim occurred in this District.

21                           **FACTS**

22           11.    Plaintiff James Clements formed South Bay in 1987. South Bay  
23 did business as an excavating company for over 30 years, being  
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2 administratively dissolved in 2018. In February 2005 Plaintiff Jason Clements  
3 also became a shareholder and an officer of South Bay.

4 12. South Bay and the Tribe entered into a Contract for Repair and/or  
5 Construction Services dated November 1, 2016 (the "Contract"), which was  
6 signed by Plaintiff Jason Clements in his capacity as the vice president of  
7 South Bay.

8 13. Under the contract, South Bay was to install approximately 35  
9 miles of fiber optic cable. The contract specifically refers to South Bay as the  
10 "Contractor". Neither Plaintiff is a party to the Contract, only South Bay.

11 14. South Bay performed a portion of its scope of work and was paid  
12 a portion of the Contract price by the Tribes, but experienced financial  
13 difficulties and stopped work in June 2017. Plaintiff Jason Clements thereafter  
14 formed a new corporation, Liquid Networks, Inc., to which South Bay assigned  
15 its rights and responsibilities under the Contract executed with the Tribes. The  
16 Tribes, however, rejected the assignment and did not allow Liquid Networks to  
17 perform work on the project.

18 15. The Tribe filed a lawsuit against South Bay and Liquid Networks,  
19 as well as against the individual Plaintiffs, in the Tribal Court on January 5,  
20 2018. The Tribe's Complaint alleged claims for breach of contract, abuse of the  
21 corporate form and piercing of the corporate veil, breach of contractual  
22 indemnification, and unjust enrichment.

23 16. However, the Plaintiffs never consented to submitting to the  
24 jurisdiction of the Tribal Court. Moreover, corporations are entities created  
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2 under state law, and the Tribe's claims regarding abuse of the corporate form  
3 and piercing of the corporate veil are governed by the law of the state of  
4 Washington, not Tribal law.

5 17. In March 2018 the Plaintiffs thus filed a motion to dismiss the  
6 claims against them for lack of personal and subject matter jurisdiction. The  
7 Tribal Court denied the motion on May 17, 2018.

8 18. The Plaintiffs thereafter filed an Interlocutory Appeal before the  
9 Court of Appeals of the Confederated Tribes of the Colville Reservation, which  
10 on March 19, 2019 affirmed the Tribal Court's decision that it has subject  
11 matter jurisdiction and dismissing without prejudice the Plaintiffs' appeal  
12 regarding personal jurisdiction and remanding the case to the Tribal Court for  
13 trial.

14 **COUNT I**  
15 **DECLARATORY JUDGMENT**

16 Paragraphs 1 through 18 above are incorporated herein by reference.

17 19. Plaintiffs are "interested parties" within the meaning of 28  
18 U.S.C. § 2201. Plaintiffs seek a declaration of its rights and legal relations  
19 concerning whether they are subject to the Tribal Court's purported  
20 adjudication of the Tribe's claims against them.

21 20. There is an actual controversy within the jurisdiction of  
22 this Court because declaratory and injunctive relief will effectively adjudicate  
23 the rights of the parties.

24 21. Specifically, the Plaintiffs request a declaration that:

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26 COMPLAINT -- 5

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2 a. The Tribes are prohibited from asserting claims against  
3 the Plaintiffs arising out of the Tribe's contract with South Bay in the  
4 Tribal Court;

5 b. The Tribal Court is prohibited from adjudicating any  
6 claims against the Plaintiffs arising out of the Tribe's contract with  
7 South Bay;

8 c. Any judgment, order, decision or decree that the Tribe  
9 might procure from the Tribal Court or which the Tribal Court might issue in  
10 the future is null, void, and of no force and effect; and

11 d. The efforts of the Tribe to adjudicate its claims against  
12 the Plaintiffs in the Tribal Court would violate Plaintiffs' rights, privileges, and  
13 immunities guaranteed by the Constitution, treaties, and laws of the United  
14 States and the State of Washington.

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16 **COUNT II**  
**INJUNCTION**

17 22. Paragraphs 1 through 21 above are incorporated herein by  
18 reference.

19 23. Unless preliminarily and permanently enjoined, the Tribe will  
20 proceed with its action to adjudicate its claims in the Tribal Court against  
21 Plaintiffs without jurisdiction over the subject matter of the claims against  
22 Plaintiffs or personal jurisdiction over the Plaintiffs.

23 24. The actions and threatened actions of the Tribe and the Tribal  
24 Court will cause Plaintiffs irreparable injury.

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26 COMPLAINT -- 6

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25. Plaintiffs lack an adequate remedy at law, other than by this suit.

WHEREFORE, Plaintiffs respectfully request this Court to grant judgment as follows:

1. For a declaratory judgment stating that:

a. The Tribe is prohibited from asserting claims against Plaintiffs arising out of the Tribe's contract with South Bay in the Tribal Court;

b. The Tribal Court would exceed its jurisdiction if it allowed the Tribe to proceed with its claims against the Plaintiffs;

c. Any judgment, order, decision, decree or the like that the Tribe may procure from the Tribal Court or which the Tribal Court might issue in the future with respect to those claims is null, void, and of no force and effect; and

d. The efforts of the Tribe to adjudicate its claims against the Plaintiffs in the Tribal Court would violate Plaintiffs' rights, privileges, and immunities guaranteed by the Constitution, treaties, and laws of the United States and the State of Washington.

2. For a preliminary and permanent injunction, independent and in furtherance of the requested declaratory judgment, enjoining:

a. The tribe from prosecuting or pursuing its claims in the Tribal Court; and

COMPLAINT -- 7

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2 b. The Tribal Court from adjudicating any claims involving  
3 the Plaintiffs arising out of the Tribe's contract with South Bay.

4 3. For Plaintiffs costs incurred in this matter; and

5 4. For such further relief as the Court deems just and proper in the  
6 circumstances.

7 DATED this 5<sup>th</sup> day of June, 2019.

8 ROBERTS JOHNS & HEMPHILL, PLLC

9  
10 /s/ Michael W. Johns

11 MICHAEL W. JOHNS, WSBA No. 22054  
12 Attorneys for Plaintiffs

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